

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES  
AND BASEBALL**

**September 12, 2005**

**5:15 PM**

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Guinta, DeVries (late)

Absent: Alderman Smith

Chairman Lopez stated before we get started I would like to congratulate our fellow Alderman who was just elected Senate President.

Chairman Lopez addressed Item 3 of the agenda:

Communication from Attorney Andrea Saunders Batchelder regarding the transfer of the New Hampshire Fisher Cats from 6 to 4 to 3, LLC to NH Triple Play, LLC noting that the Eastern League has approved the transfer and requesting written approval from the City of the transfer.

Thomas Clark, City Solicitor, stated the two parties have come to an agreement on the transfer and the Eastern League has approved it setting up some conditions that they have to meet by the final closing. The City's agreement states that if Major League Baseball approves the transfer then the City can't deny it. I know that I have talked to the Finance Department and they have looked at the financials of the ownership group and they found no problems.

Kevin Clougherty, Finance Officer, stated what Tom is saying is true. We had Randy go down and take a look at the financials and verify numbers and there was no cause for concern on our part. Major League Baseball is our business partner and they explained to you several months ago what they were going to be doing in terms of monitoring their membership. They have gone through their due diligence and the letter you have in your agenda is, I believe, from the Eastern League to Major League Baseball saying that it is a right move for the team and they have no objection.

Chairman Lopez stated I understand that the Committee can approve this and it doesn't have to go to full Board. There is no change in the agreement, correct?

Solicitor Clark responded correct.

Alderman DeVries stated I just want verification that the protections that we had in place, we the City, are still in place in the new contract and we have not lost anything.

Solicitor Clark replied they are assuming all of the obligations of the contract except for the obligation under 8.1, which is the personal guarantee by the new ownership. That is the way the contract was written and that is what the Eastern League insisted on back when we first arranged it. My suggestion to the Committee would be if you are going to give your approval you ought to make it contingent upon the parties meeting the obligations set forth to make sure they meet all of those obligations.

Alderman Gatsas stated Tom I am looking at the Eastern League approval it says, number 4 "prior to closing all debt, liens, claims and encumbrances upon the entity knowing the franchise will be discharged with the exception of the assumed debt by NH Triple Play, LLC totaling no more than \$3 million and described in the purchase and sales agreement, the Fisher Cats Agreement Schedule 1, 1B, and 3 dated July 11, 2005." Can you explain to me what that means?

Solicitor Clark replied I haven't seen the actual purchase and sales agreement. I can tell you what the language means. It is fairly standard. The purchaser is buying a certain percentage of the team. In the purchase price and in his purchase he is assuming the \$3 million in debt that the former owner had and any debt over that he has to discharge it himself. He has to pay it off.

Alderman Gatsas asked that would be Mr. Weber.

Solicitor Clark answered yes.

Alderman Gatsas asked the letter of credit, is that still in Mr. Weber's name or is it assumed by Mr. Solomon.

Solicitor Clark answered the letter of credit stays in place.

Randy Sherman, Deputy Finance Officer, stated it remains in Mr. Weber's name.

Alderman Gatsas asked and how much of that letter of credit has been drawn down.

Mr. Sherman answered none.

Alderman Gatsas asked the amount of money on overages at the stadium, what is the status of that.

Solicitor Clark responded I don't know. You are asking the lawyer and I don't know.

Mr. Clougherty stated it is usually Frank or Mike that would have that.

Kevin Sheppard, Deputy Public Works Director stated if I am looking at this right it is about \$250,000 that you have in escrow right now.

Mr. Sherman stated but what he has paid we don't know.

Mr. Sheppard responded right.

Alderman Gatsas stated I thought we were aware of all overages. I thought it was close to \$1 million.

Mike Castagna, Parsons-Brinckerhoff, stated he has paid approximately \$1.2 million. There is some money left to be paid that is under scrutiny right now. They can't agree on a number and Parsons-Brinckerhoff is on top of that and it should be taken care of relatively quickly. This has been going on for about a month. As soon as that is agreed upon, that money will be paid as well.

Alderman Gatsas stated I am looking at the letter from Gallagher & Cavanaugh and it talks really about three entities here. It talks about NH Triple Play, LLC with DSF Sports, LLC managed by Arthur P. Solomon at its helm. Can you explain to me whether our lease is with DSF Sports, LLC or NH Triple Play, LLC?

Solicitor Clark responded my understanding is the agreement is going to be with NH Triple Play, LLC. As I read this, DSF Sports is an entity that Arthur Solomon is using to work within the lease but the lease is with NH Triple Play, LLC.

Mr. Clougherty stated that is my understanding also.

Alderman Gatsas stated the asset that has been transferred being the ball team has it been transferred to NH Triple Play, LLC or DSF Sports.

Mr. Clougherty responded NH Triple Play, LLC.

Alderman Guinta asked can you just give a further explanation again of what DSF Sports is.

Solicitor Clark answered that is an entity, as I understand it, that Arthur Solomon already has in place. They will be the operator of the lease. The lease is with NH Triple Play. It is between the City and NH Triple Play, LLC. DSF will be, instead of a person, they will be the entity making sure that the lease's obligations are met.

Alderman Guinta asked and these entities were filed with the Secretary of State's Office in NH.

Solicitor Clark answered I don't know.

Alderman Guinta asked have they both been filed with the NH Secretary of State's Office.

Solicitor Clark responded they have to be entities in existence, yes, for the league to approve them.

Alderman Guinta replied in existence but are they in existence in New Hampshire or are they in existence in Massachusetts. I believe that a government contractor in NH has to follow the RSA's correct?

Solicitor Clark responded yes and in the agreement according to the Eastern League it says that NH Triple Play, LLC is a limited liability company in New Hampshire.

Alderman Guinta asked is DSF a Massachusetts limited liability company.

Solicitor Clark answered I don't know but our agreement will be with NH Triple Play.

Alderman Guinta asked can you just clarify what authority relative to the transfer this Committee has.

Solicitor Clark answered the full Board delegated its authority to this Committee to the extent that you make sure that the procedures under the agreements in place are carried out. You cannot change those agreements, but you have the authority to grant approvals as long as the agreements don't change.

Alderman Guinta asked once the transfer of the team has been completed is there a requirement that this Board approve or deny the transfer.

Solicitor Clark answered the management agreement between the City and 6 to 4 to 3 at the insistence of the Eastern League when they came in and negotiated with the full Board, states that if Major League Baseball approves the transfer then the City cannot disapprove. We have to approve it. If they have done their due diligence and they believe it is a bonafide buyer then the City can't say no we don't want that buyer.

Alderman Guinta asked the other letters of credit that are in place relative to the riverfront development, does this transaction in any way impact those letters.

Solicitor Clark answered not to my knowledge; no.

Alderman Gatsas asked how much of those letters of credit have been drawn down.

Mr. Clougherty answered the only one that has been drawn down I think is Chinburg's.

Mr. Sherman stated yes and I think it around \$50,000 to \$70,000.

Alderman Gatsas asked does that allow him to drawn down to zero if he is meeting obligations instead of paying taxes on it.

Mr. Clougherty replied if I understand your question it is can he continually drawn down on the line of credit rather than paying the taxes. I think that is something that the Committee can talk to him about. I think that is negotiable. It is allowable.

Mr. Sherman stated there was no requirement to refill it if it is drawn down.

Chairman Lopez asked wasn't there something about 60% that he could draw down.

Mr. Clougherty responded that is when they go away. I think that the reason that it was drawn down the first time was a matter of convenience for him because of the timing of when he was getting his finances. I don't think it was his expectation to drawn down on the letter of credit at the time and I don't think it would be the City's position that we would encourage him to do that. I would be happy to talk to him and find out what his plans are moving forward but it wasn't my understanding that it was his intention to do that continuously. It was a one time use of that just because he needed the initial funding for the project to get it started. Now that it is started, there shouldn't be any draw down. That is my understanding.

Alderman Gatsas asked Mr. Catapano's letter of credit is still in place.

Mr. Clougherty answered yes.

Alderman Gatsas asked has he made his payment on taxes.

Mr. Clougherty responded my understanding is that everybody has paid in full.

Chairman Lopez stated the motion would be to accept the transfer. Solicitor Clark, can you help me out with the wording?

Solicitor Clark stated it would be to approve the transfer contingent upon them meeting all of the requirements set forth by the Eastern League.

Alderman Guinta asked does that include Section 8.1.

Solicitor Clark answered no. The Eastern League has already said that is not part of it.

Alderman Guinta asked so we can't reinclude that section.

Solicitor Clark answered no. The Eastern League made, well they didn't make but they appeared before the full Board and strongly asked for it to be changed and that was done by the full Board.

Alderman Gatsas asked what is Section 8.1.

Solicitor Clark answered personal guarantee.

Alderman Guinta asked so the personal guarantee from Drew Weber does not transfer to Arthur Solomon.

Solicitor Clark answered Arthur Solomon is not required to put up a personal guarantee.

Alderman Guinta asked but the personal guarantee from Drew Weber still exists since he is a minority owner.

Solicitor Clark responded he is still a minority owner so I think it stays in place.

Mr. Sherman stated and his letter of credit stays in place.

Alderman Guinta asked so essentially the agreement does not require the new owner, Arthur Solomon...

Solicitor Clark interjected right the new owner does not have to put up a personal guarantee.

Alderman Guinta asked but the personal guarantee made by Drew Weber stays in place.

Solicitor Clark answered I believe so. We haven't discussed it with him but I believe so.

Alderman Guinta responded I would think we need to know that.

Chairman Lopez stated it wouldn't have any bearing on this.

Alderman Guinta replied I guess it wouldn't have any bearing on this but it would be good to know moving forward if there are any changes that Drew Weber has, as a result of the transfer, relative to his financial obligations.

Chairman Lopez stated we will have Finance and the Solicitor look into that issue and report back to the Committee.

Alderman Gatsas stated I have a question on why...so what we are saying is that we are allowing them out of the personal guarantee as a Committee. The lease requires one...

Solicitor Clark interjected no the management agreement between the City and 6 to 4 to 3 states that upon a transfer the new owner does not have to put forth a personal guarantee. It does not apply.

Mr. Clougherty stated there was a lot of discussion about that by the league when they came before this Board. If you remember they really felt it was important for them to be able to get other investors. That was one of the features that was put in. Now does that not requiring a new majority owner to have a personal guarantee relinquish the minority original owner from his is something that we will look at. I don't think it does but we will go back and look at it.

Alderman DeVries asked if the minority owner still stands behind the personal guarantee today would that still be for any obligations or for the entire part of the obligation or his percentage share of ownership.

Mr. Clougherty answered his letter of credit is for his entire portion and I would expect that his other guarantee would stay the same

Alderman DeVries asked so until you come back to us with further clarification on the majority owner we consider the minority owners guarantees are in place as they were prior to the transfer.

Mr. Clougherty responded there is nothing that I am aware of to release him from his personal guarantee.

Alderman Gatsas stated my question is if we are relinquishing personal guarantees in Section 8.1 why are we assuming that we are holding the minority holder in place with a personal guarantee.

Mr. Clougherty responded you are not relinquishing that because the arrangement with the league was that anybody new would not be required to give a personal guarantee. I don't recall there being a discussion of reducing or eliminating or drawing back on the original guarantee by the original owner, if he stays in place and he is in part in place.

Alderman Gatsas stated I guess I find it hard to believe, Kevin, that somebody is going to relinquish whatever percentage – 60% or 70% of an entity and still be on the hook for a personal guarantee for the whole entity.

Mr. Clougherty replied remember that the letter of credit section of this agreement too says that he can be the grantor and that his letter of credit stays in place. I think you have to look at the whole document and that is what Tom did. We will go back and look at it but I wouldn't automatically say that the \$2 million guarantee is dismissed. I don't think that is the case. I may be wrong.

Alderman Guinta asked would it be appropriate for us as a Committee to get some sort of clarification in writing from a broader intention of Mr. Weber relative to this section of the agreement before we put our stamp of approval on it. I want to make sure that we are 100% clear before we move forward. The reason I say that is I wouldn't want in any way our endorsement of the transfer of the sale to be a message to Drew Weber that there is now a change in the line of credit status or a change in his percentage of responsibility given the fact that the contract appears to be somewhat silent on that issue.

Chairman Lopez stated it is a good point it is just that I don't know. That is a legal question. Even if we find out would that have a bearing on us approving or disapproving something?



Solicitor Clark stated I think you are obligated legally to approve it.

Chairman Lopez stated your question is valid and they will check into it.

Solicitor Clark stated we will research that for you.

Alderman Guinta asked are we setting...I know that we have to...the Committee has little teeth relative to the transfer but my concern is are we setting some sort of and I don't want to say precedent but are we sending a message to the majority owner or the minority owner relative to the City's position on either the line of credit or the minority owner's guarantee because of the fact that it is silent. I just wonder if before we take any action we should at the very least have a clarification or some sort of memo of understanding.

Solicitor Clark answered I don't see your action sending any message other than saying that you are following the agreement that the Board entered into that if the league approves the transfer you will approve it.

Alderman Gatsas asked does anybody have Section 8.1.

Alderman DeVries stated I have a question while they are perusing Section 8.1. The fact that we are endorsing...I realize that we have no choice but to accept this contract but if we are endorsing it tonight and you did wish to have a legal challenge is that going to in any way jeopardize a legal challenge that the City may put forth.

Solicitor Clark responded in my opinion no. All you are doing is what the contract calls for. If there is an interpretation different later that results in a court challenge then this action won't affect that.

Alderman DeVries asked that would be your opinion.

Solicitor Clark answered that is my opinion yes.

Chairman Lopez asked is there a time element in which we have to approve this.

Mr. Sherman stated my discussions with Joe MacEachern was that they wanted to close before the end of the month.

Chairman Lopez asked roughly how long would it take to answer that particular question. I agree that it has no bearing on this and is a separate issue the way I read it and understand it. Even if we come up with something and there is something along the line, the Eastern League is saying they approve it minus that

anyway. So that becomes a legal thing within the City and Drew Weber and anybody else pertaining to that.

Alderman Guinta stated I agree with that I am just wondering if we would have a more specific position prior to closing if we had a document in writing from Drew, the minority owner.

Alderman DeVries asked are you saying that it might enhance our negotiating ability in order to get such a memorandum of understanding if we hold off on this contract.

Solicitor Clark asked what negotiating ability.

Alderman DeVries answered to extract the transfer to the majority to the new majority owner.

Solicitor Clark stated you have the legal authority to give an approval. You do not have the right to say no.

Alderman Guinta responded I am not saying we are going to say no. What I am saying is that we would like to get some clarification and it would probably be more appropriate to get those clarifications before the Eastern League closes.

Solicitor Clark replied it is up to this Committee to decide what they want to do. Regardless of what they say, you are going to have to approve it.

Alderman Gatsas stated I just read 13.2(1). I don't know if you have gotten that far. Can you read that for me and give me a clarification because this sounds like the obligation ends once there is a third party? You have to start at 13.2 and then go to the next one. I think if you read that agreement, the agreement is under the assumption of a full transfer and not a partial transfer. There is no clarify on what the position is for the minority holder and whether they are still obligated and I guess for all parties before we run into a problem we should understand what that is.

Solicitor Clark responded we will get clarification of that for the Committee but that does not affect the transfer obligation that the City has right now.

Alderman Guinta stated there is a section here that says "any existing guarantor" which I assume would be the minority owner, "shall therefore be released from his obligations as a guarantor under Section 8.1 of the management agreement with respect to any duties, obligations or defaults first arising after the effective date of such assumption by the third party." So once the transfer is completed, which you

said they would like to do by month's end, according to this is it relieving the minority owner of any obligation.

Solicitor Clark responded it doesn't talk about minority owners. It talks about the manager and as Alderman Gatsas pointed out a few months ago...

Alderman Guinta interjected it says the existing guarantor.

Solicitor Clark replied it says "this agreement is contemplating a complete transfer." It doesn't contemplate a partial transfer. The entity right now as the manager is still a partial manager under the new one and we believe that it will allow us to require him to keep his personal guarantee in place. It is not clear in this and we will get it clarified for you.

Mr. Clougherty stated under the terms as I recall the guarantor is the person who...it is still Drew and it is his entirely. He is the guy that...the guarantor relates to the letter of credit and he is taking that whole piece. That is not partial. Again, I think we have to go back and look at it. I don't think we can automatically say today yes or no.

Chairman Lopez asked how long would it take you to clarify that.

Solicitor Clark answered maybe by next week. Our position might be different than their position thought.

Alderman Guinta responded well all the more reason to find out.

Solicitor Clark asked and then what.

Chairman Lopez stated I think from what I understand it doesn't make a difference what it is because it is not going to stop us from this transfer. We have the obligation to move forward. The issue of 8.1 has nothing to do with it. That is a separate issue. I don't know what else we could do. What would you think we could do?

Alderman Guinta stated I would agree with your line of questioning and just asking for a clarification and I would love to get the clarification as quickly as possible.

Solicitor Clark stated we will get it as quick as possible and if the Committee wishes to wait until then that is fine.

Chairman Lopez stated we will recess the meeting until we get clarification of Section 8.1 unless the Committee wants to vote on this.

Alderman Gatsas stated I think that Ropes & Gray are on the hook here because they were advising us and if this thing blows up I would hope that somebody would say I made a mistake and didn't advise you of a partial transfer and let's make sure we understand that they are on the hook because they certainly, as far as I am concerned with the line of questioning that I gave them they should understand they are on the hook for this deal.

Solicitor Clark responded they, I think, are aware of that. I believe that has been discussed.

Alderman Gatsas stated I would like to make sure they weigh in.

Solicitor Clark responded as you are aware, when we hired new Bond Counsel the Board was advised that Walter McCabe and Ropes & Gray may still be needed to do a few things on this project and we will get in touch with them and have them weigh in on it.

Alderman Gatsas stated and I think it should be protecting their own interest and I don't think it should be at \$700/hour. I think that this should be a legal situation that he should have been obligated to tell us being the expert in this field that if there was a minority interest we might be losing this guarantee. Somebody should have spoken up real quickly about something like this arising and maybe Mr. McCabe can inform us what his position is.

Solicitor Clark replied we will contact him tomorrow.

Alderman Guinta asked so that would allow us to reconvene any time this week.

Solicitor Clark stated right but you would have to post it. If you are going to recess without posting you have to recess with a specific time to come back so that the public knows. You can't just recess and then get together and meet without telling the public.

Alderman Guinta asked is there a 24 hour notice for posting.

Solicitor Clark answered yes under the Right to Know Law.

Chairman Lopez called for a recess until the clarification on Section 8.1 comes in.